

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5941 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No.

NASIMBANU N PATHAN

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR.NEEGAM SHUKLA,AGP for Respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 07/11/96

ORAL JUDGEMENT

This Special Civil Application filed by lady detenu has been filed against the detention order dated 31.5.1996 passed by the Police Commissioner, Ahmedabad City under the provisions of Gujarat Prevention of Antisocial Activities Act, 1985. The detention order was executed on 31.5.1996 itself and since then the petitioner is under detention lodged at Vadodara Central Jail, Vadodara.

This Special Civil Application was filed on 8.8.1996 and on 12.8.1996 Rule returnable for 9.9.1996 was issued but so far neither any reply has been filed nor any affidavit of the Detaining Authority has been filed.

The grounds of detention enclosed with the detention order show that criminal case under NDPS Act was registered against the petitioner at Shahpur and at the time when the detention order was passed the case was pending trial before the Court. The learned Counsel for the petitioner has orally argued that the petitioner has been discharged from the aforesaid criminal case under NDPS Act. The learned AGP is not in a position to say anything for this oral statement made by the learned counsel for the petitioner.

The learned Counsel for the petitioner has submitted that the offence was registered against the petitioner on 23.12.1995 and thereafter the order has been passed on 31.5.1996. Thus there is no explanation for this period of more than five months in passing the detention order. With regard to the incidents dated 14.4.1996 and 1.4.1996 statements have been recorded against the petitioner's antisocial activities. It is submitted that opinion could not be formed on the basis of these statements that it was a case of breach of public order against the petitioner. On the basis of the statements in support of the incidents dated 14.4.1996 and 1.4.1996 at the most a case of breach of law and order can be said to be made out.

It is thus found from the facts of this case that there was delay in passing the detention order i.e. from December to May which has remained unexplained and on the basis of the statement with regard to the incidents dated 14.4.1996 and 1.4.1996 it cannot be said that the petitioner had disturbed the public order. Thus no case of breach of public order is made out against the petitioner and at the most it can be said to be a case of breach of law and order, therefore, the detention order deserves to be set aside.

Accordingly this Special Civil Application is allowed. The impugned detention order dated 31.5.1996 passed by the Police Commissioner, Ahmedabad City is hereby quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith if not required in any other case. Rule is made

absolute.
